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# In the Supreme Court of the United States

OCTOBER TERM, 1936

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No. 255

THE ELMHURST CEMETERY COMPANY OF JOLIET, PETITIONER

*v.*

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

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*ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT*

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## BRIEF FOR THE RESPONDENT

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### OPINIONS BELOW

The memorandum opinion of the United States Board of Tax Appeals (R. 16–18) is not reported. The opinion of the United States Circuit Court of Appeals (R. 38–40) is reported in 83 F. (2d) 4.

### JURISDICTION

The judgment of the Circuit Court of Appeals was entered on March 17, 1936 (R. 41). On May 21, 1936, the court denied a petition for rehearing (R. 42). The petition for a writ of certiorari was

filed August 3, 1936, and was granted October 12, 1936. The jurisdiction of this Court is conferred by Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

### QUESTION PRESENTED

Whether the Circuit Court of Appeals properly reversed the Board of Tax Appeals for its failure to consider, in fixing the March 1, 1913, value of cemetery lots, that many years would elapse after that date before all of the property could be sold for burial purposes.

### STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are set forth in the Appendix, *infra*, pp. 21–23.

### STATEMENT

The petitioner about 1909 purchased 137 acres of land in or about Joliet, Illinois, which it has since owned and operated as a cemetery. The land cost $60,000. The north 37 acres of the tract were improved for sale as burial lots by landscaping, laying out roads, constructing pools, leveling, and planting trees, flowers, and shrubbery, at a cost of about $35,000. (R. 11–12, 17.) From the acreage so improved sales of burial lots have since been made by the petitioner (R. 17).

During the period from 1909 to 1913 the number of square feet sold and the average selling price per square foot were (R. 17):

| | | |
|---|---|---|
| 1909 | 7,308.00 sq. ft. at 73¢ | per sq. ft. |
| 1910 | 7,095.55 sq. ft. at 71.5¢ | per sq. ft. |
| 1911 | 7,312.20 sq. ft. at 70.2¢ | per sq. ft. |
| 1912 | 6,320.20 sq. ft. at 77.6¢ | per sq. ft. |
| 1913 | 8,506.10 sq. ft. at 79.5¢ | per sq. ft. |
| Total | 36,452.05 sq. ft. at 74.03¢ | per sq. ft. |

During the month of March 1913, 312 square feet were sold at an average of 78.08¢ per square foot (R. 12). The average number of square feet sold per year during these first years of the petitioner company's existence was slightly over 7,000 square feet, and at March 1, 1913, the fair expectancy of sales of lots for the year 1913 was between 7,000 and 7,500 square feet (R. 14).

The taxable years under review are those of 1926, 1927, and 1928. During these years the number of square feet sold and the average selling price were (R. 17):

| | |
|---|---|
| 1926 | 14,939.9 sq. ft. at $1.55 |
| 1927 | 10,979 sq. ft. at 1.66 |
| 1928 | 17,077.5 sq. ft. at 1.77 |

In reporting its income the petitioner used fair market value as of March 1, 1913, to determine its taxable gain in the sale of burial lots in the later years. To determine this value it chose the average selling price of lots for the one year period from March 1, 1912, to March 1, 1913, which was 76.6¢ per square foot. (R. 15, 17–18.)

The Commissioner of Internal Revenue determined the March 1, 1913, fair market value of the property to be 23.96¢ per square foot. The fair market value as of March 1, 1913, of the unsold land in the improved tract was placed at $79,458.55,

which corresponded to a value of 13.7¢ per square foot. By adding to this amount the cost of improvements, amounting to 10.26¢ per square foot, the Commissioner determined the value of 23.96¢ per square foot for the improved land on March 1, 1913. (R. 6.) The respondent's determination of value included an estimate made by discounting to the then present value in the light of the prospective time of sale of the property (R. 15). The only witness at the hearing before the Board of Tax Appeals was the superintendent of the petitioner; he estimated that it would take approximately 75 years from 1913 to sell all of the lots in the improved area (R. 13, 19).

The Board of Tax Appeals held that the valuation used by the petitioner, the average selling price in the year prior to March 1, 1913, was reasonable and entered judgment for the petitioner (R. 18). The respondent filed a motion with the Board to make additional findings of fact and to modify its decision, which was denied (R. 19–22), and a motion to have the order denying this motion reviewed by the full Board, which was also denied (R. 23–27). On petition for review of the Board's decision the Circuit Court of Appeals for the Seventh Circuit reversed the decision of the Board with direction to affirm the Commissioner's determination (R. 41).

## SUMMARY OF ARGUMENT

The Board erred as a matter of law in fixing the fair market value on March 1, 1913, at the figure for which isolated burial lots were being sold at that time.

The fair market value of the *entire* acreage held for sale was the basis upon which to calculate capital gain. *Reinecke* v. *Spalding,* 280 U. S. 227, 233. The sales prices of burial lots in 1913 were thoroughly unrepresentative of the price which could be obtained were the entire acreage, or any substantial portion of it, to be sold at that time. They cannot, therefore, be used as the sole evidence of fair market value. *Dayton P. & L. Co.* v. *Commission,* 292 U. S. 290, 300–301. In addition, the "sale prices" included advance payments for future services.

Value can be determined only in the light of all the relevant circumstances applicable to the particular case. *Olson* v. *United States,* 292 U. S. 246, 247. The Board overthrew the Commissioner's determination even though the taxpayer had failed to introduce evidence as to many factors relevant to the determination of fair market value of cemetery land. We complain in particular of the refusal to consider the necessary lapse of time before the bulk of the property may be sold. See *Reinecke* v. *Spalding, supra.* The court below therefore correctly reversed the decision of the Board because in ignoring this, as well as other factors

necessary to the determination of fair market value, the Board erred as a matter of law. *Great Northern Ry.* v. *Weeks,* 297 U. S. 135, 149–152.

The court below correctly affirmed the Commissioner's determination, because there was no substantial evidence to support the petitioner's attack upon this determination. Nor does there appear to be any reason of fairness why the petitioner should have a rehearing.

## ARGUMENT

The sole issue in this case is the fair market value of petitioner's improved cemetery land on March 1, 1913. The Commissioner determined this value to be 23.96 cents per square foot (R. 6). The Board set aside this determination and accepted the taxpayer's figure of 76.6 cents, relying upon the evidence of contemporary sales of lots to the exclusion of all other considerations. It said (R. 18):

> We are of opinion that the valuation for which petitioner contends is reasonable and should be allowed. It is based upon actual sales, and consequently comes as closely as may be to that fair market value, so often judicially defined as the price which property will bring when offered by a willing seller to a willing buyer, neither being obligated to buy or sell.

The Government does not dispute that sales price is ordinarily the best indication of fair market value. *Keystone Steel & Wire Co.* v. *Commis-*

*sioner,* 62 F. (2d) 458 (C. C. A. 7th); *Curtiss* v. *Commissioner,* 57 F. (2d) 847 (C. C. A. 5th); *Virginia* v. *West Virginia,* 238 U. S. 202, 212; compare *Standard Oil Co.* v. *So. Pacific Co.,* 268 U. S. 146. But this general rule seems to us to be wholly inapplicable in determining the fair market value of cemetery land. We submit that, in applying the rule to property of this nature, the Board committed reversible error of law, because: (1) sales so unrepresentative as these constitute no evidence of fair market value; and (2) the Commissioner's determination was overthrown by the board even though the taxpayer failed to introduce evidence as to other indispensable elements of fair market value; and (3) the Board failed to consider the time which must elapse before sale of the property.

1. The basis on which to compute capital gain is the fair market value on March 1, 1913, of the *entire* amount of improved land which was available for sale as cemetery lots.[1] See *Reinecke* v. *Spalding,* 280 U. S. 227, 233. The fair market value is the price which a willing seller and a purchaser willing and able to buy would set (*Chicago Ry. Equipment Co.* v. *Blair,* 20 F. (2d) 10, 13 (C. C. A. 7th); *Stiles* v. *Commissioner,* 69 F. (2d) 951 (C. C. A. 5th); *Standard Oil Co.* v. *So. Pacific*

[1] It should be noted that this method is very fair to the taxpayer in that it gives him a basis for the saleable acreage which includes all of the cost or fair market value of the non-saleable acreage upon which the improvements are located.

*Co.*, 268 U. S. 146, 156; *New York* v. *Sage*, 239 U. S. 57, 61) were the entire saleable acreage, or a genuinely representative portion, to be sold in 1913. The price obtained on the isolated sales of a few thousand square feet in the year prior to March 1, 1913, is grossly misleading if taken as conclusive evidence of fair market value.

The relatively high price obtained for individual cemetery lots is possible only under circumstances which necessarily prevent the sales from being representative of the entire property held for sale. The purchaser of a burial lot acts on motives which are largely nonpecuniary. This attitude of prospective buyers cannot be applicable, in 1913, to more than a very small percentage of the property. To apply to the entire property the price set on the sale of a few lots is to assume the existence of this especially favorable market for *all* of the lots. This assumption is contradicted both by the record and by common sense.

Any considerable proportion of the saleable acreage could have been sold in 1913 only (a) to a commercial purchaser or (b) by drastically slashing the price to obtain wide purchases by those who otherwise would not buy. It requires no argument to demonstrate that one who purchased a cemetery in order to obtain a business income would not pay more than a small fraction of the price currently received on the sales of isolated lots; the time required to sell the bulk of the property, the uncertainty of the future markets, and the

expense of upkeep would greatly reduce this figure. It is equally plain that any attempt to sell a substantial amount to individual purchasers would require a tremendous reduction in price. The potential purchasers of cemetery lots are necessarily restricted in number and the market for burial lots could be expanded, if at all, only by a great decrease in price.

In addition, the selling price of the lots included an advance payment for future services. The taxpayer's witness testified (R. 13–14):

> Every grave and lot in the cemetery sold since its organization is under perpetual care, and when perpetual care is provided, it means keeping the roads and drives in proper repair, keeping the drainage system in proper repair, keeping the fences in repair, cutting the grass, pruning the trees, shrubs, and keeping it in good condition. It is difficult to say how much it would cost to maintain the cemetery * * * but I would say that it would cost about $4,000.00 a year.

It is plain that the fair market value cannot be obtained by use of sale price unless appropriate reduction in the sale price be made because of this factor;[2] otherwise the valuation would include

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[2] The income realized from miscellaneous sources, such as the charges for interring, planting, and care of flowers, etc., would offset these expenses (R. 14). But this is a casual income and not derived from every lot owner. It cannot properly be used to offset the necessary reduction in sale price because of the perpetual care agreement.

both the land and the amount charged for future services.

The rule that sales may ordinarily be taken as the best evidence of fair market value has no application to this case. It seems plain that the 1913 sales were thoroughly unrepresentative and cannot be taken to be evidence of fair market value sufficient to justify disregard of the Commissioner's determination. *Dayton P. & L. Co.* v. *Commission,* 292 U. S. 290, 300–301; *Heiner* v. *Crosby,* 24 F. (2d) 191, 193 (C. C. A. 3d); *Walter* v. *Duffy,* 287 Fed. 41 (C. C. A. 3d).

2. Valuation is a process which requires that all relevant factors be considered. *The Minnesota Rate Cases,* 230 U. S. 352, 434; *Standard Oil Co.* v. *So. Pacific Co., supra,* 156; *Los Angeles Gas Co.* v. *R. R. Comm'n,* 289 U. S. 287, 306. No inflexible rule, governing all cases, can be laid down by which to determine what factors are relevant. *Rowley* v. *Chicago & N. W. Ry.,* 293 U. S. 102, 109. The selective process must necessarily be one based on the particular circumstances of the case in hand: *Olson* v. *United States, supra.* Nor can the relevant factors be expected to point to an identical result; valuation "is not a matter of arithmetical calculation." *Rowley* v. *Chicago & N. W. Ry., supra,* 109. It results that the legal canons of valuation require that no relevant factor be disregarded (since the result would in all likelihood be different if it, too, were considered) and that the

relevance of factors which may indicate fair market value must be determined with regard to the type of property being valued.

Since in this case the Board could not rely on the 1913 sales price as conclusive evidence of fair market value, it committed reversible error of law in setting aside the Commissioner's determination when the taxpayer had submitted no evidence to indicate that, if the 1913 sales price were considered with the other relevant factors, the Commissioner's determination was wrong. We cannot attempt to enumerate the factors which must necessarily be considered in determining the fair market value of cemetery land. It may, however, be suggested that these factors would include at least some of the following: (a) estimated time before sale; (b) the social standing of those who have already purchased lots; (c) any general tendency of cemetery lots to increase in value; (d) the proximity to urban centers; (e) the extent and character of the improvements (shrubs, roads, etc.); (f) the character of the neighborhood in which the cemetery is located; (g) the size and population trend of the community served; and (h) the number and character of competing cemeteries and the prices charged by them. None of these factors would be capable of calculation with absolute precision. But it is plain that most of them were reasonably foreseeable in 1913. They should not, therefore, be ignored in the determination of fair

market value in that year. *Ithaca Trust Co.* v. *United States,* 279 U. S. 151; *Lucas* v. *Alexander,* 279 U. S. 573; *Reinecke* v. *Spalding, supra; Johnson* v. *United States,* 44 F. (2d) 244 (C. Cls.); *Robertson* v. *Routzahn,* 1 F. Supp. 355, affirmed, 75 F. (2d) 537 (C. C. A. 6th); *Patterson* v. *Commissioner,* 42 F. (2d) 148 (C. C. A. 2d).

3. The factor which we wish particularly to stress is the length of time which must elapse before sale. This factor is a necessary and an important qualification of any finding of cemetery value, and the record contains sufficient evidence to demonstrate sweeping error in the Board's reasoning and findings.

Unlike other forms of real property, cemetery lots cannot be sold *en bloc* at any given moment, but must be sold gradually over a period of several generations.[3] Plainly, a lot which, if sold, would be worth $100 does not now have a fair market value of $100 if it probably cannot be sold for 50 or 75 years in the future. In this case, the taxpayer's witness testified that it would take 70, 80, or, more probably, 95 years from 1913 to sell the bulk of the cemetery lots.[4] Assuming, conservatively, that it would take 85 years to sell all the lots, and that an

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[3] Of course, a commercial purchaser could buy the entire remaining tract, but his price would correspondingly be reduced in view of this consideration.

[4] It is not completely clear that the witness was, as we have assumed, estimating the time from 1934 rather than 1913. See Record 13, 19. So far as the principle is concerned, it is immaterial what the actual estimate was.

equal number are sold each year, the present worth of the average lot would be only 23 cents on the dollar expected to be realized upon the eventual sale.[5]

The Board entirely disregarded the time element and gave no consideration whatever to the undisputed fact that the lots could not all be sold in 1913 but must of necessity be sold in small fractions of the whole over a period of perhaps 85 years. Any valuation is illusory which accepts the high figure set by current sales of isolated fragments of the whole and at the same time disregards the length of time necessary to dispose of the property in a manner such as to realize these high prices.

This Court has held in *Reinecke* v. *Spalding*, 280 U. S. 227, that it is error to fail to consider the time element. There it reversed the lower courts in a suit for refund because the taxpayer's evidence of the depletion basis for a royalty right was insufficient to support the burden resting on her. The Court stated (p. 233) that "Manifestly, the fair market value of this interest in 1913 was

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[5] It may be assumed that it will be 85 years from 1913 before the lots would all be sold. If an equal number were sold each year, and if present worth were discounted at 5% compounded annually, the present value would be about 23 cents on the dollar. (The figure is derived by adding the amounts given in a present worth table for each of 85 periods and dividing by 85. A table is found in *Paton*, Accountants' Handbook, pp. 1734–1735.)

of the whole acreage held for sale.[8] The petitioner's second misconception is that the Commissioner applied the discount method to the prices received in 1913 (Br. 19–20). The record does not show the value which the Commissioner discounted to present worth. Thus each of petitioner's objections to the use of the discount method in this case is unfounded. It results that the Board erred in refusing to consider this factor.

Petitioner seeks to support the Board's finding of fair-market value on March 1, 1913, by evidence of the prices received for lots in 1926–1928 (Br. 18). Apart from the objection that these, too, were unrepresentative sales, it is well settled that subsequent events may not be considered in determining value. *Ithaca Trust Co.* v. *United States, supra; International Harvester Co.* v. *Kentucky,* 234 U. S. 216, 222; *Lewellyn* v. *Elec. Reduction Co.,* 275 U. S. 243; *New York* v. *Sage, supra,* p. 61.

Petitioner argues (Br. 10–14) that the court below weighed the evidence. It is immaterial whether or not the court weighed the evidence be-

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[8] This error explains petitioner's perplexity that, under the Commissioner's valuation, there would be a tremendous gain realized over night in the case of a sale in March 1913 (Br. 27). The isolated sale of a single lot would, of course, be at a price much higher than the average fair market value of the entire property held for sale, in the determination of which allowance is made either for the lower price realized if a substantial portion of the property were to be sold at once or for the length of time necessary to obtain the high price realized on sales of single lots.

fore the Board, for it is plain that its judgment of reversal was required because of the Board's errors of law. However, we wish to point out that the court below did not pass upon the weight of evidence,[9] but reversed the Board merely because it was in error, as a matter of law, in ignoring the time element and assuming that the sale price of a few lots measured the selling price of the entire tract on March 1, 1913.

The court below directed that the determination of the Commissioner be affirmed. This resulted from its view that the taxpayer had introduced no substantial evidence to overcome the presumption of correctness which attaches to the Commissioner's determination (R. 40).

The Commissioner's determination of fair market value was made on a basis not shown by the record.[10] The valuation cannot be shown to be

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[9] The court occasionally (R. 39–40) contrasts the cost price of $140 per acre in 1909 with the $32,000 per acre value fixed by the Board for the value on March 1, 1913. This discussion is not directed toward weighing the evidence but is either an illustration of the extraordinary result reached by ignoring the time element (R. 39) or is used to point the fact that evidence of value which ignores the distant date of sale is evidence so inadequate as to preclude the taxpayer from taking advantage of the statutory alternative of choosing cost or March 1, 1913, value, whichever is greater (R. 40).

[10] It was based on an engineer's report. The taxpayer objected to its introduction and cannot, therefore, object that the Commissioner's method is not disclosed. The statement of Government counsel as to the methods used in the report is not evidence, as petitioner seems to concede (Br. 9), and is demonstrably erroneous or inadequate. Had it been

wrong merely by introducing evidence which might point to another result. The determination of the Commissioner of Internal Revenue is *prima facie* correct and the burden is on the taxpayer to establish that the Commissioner's determination is incorrect. *Burnet* v. *Houston,* 283 U. S. 223; *Welch* v. *Helvering,* 290 U. S. 111. In making his determination the Commissioner is presumed to have brought to his aid the technical skill and knowledge of trained assistants. *Portage Silica Co.* v. *Commissioner,* 49 F. (2d) 985, 987 (C. C. A. 6th), certiorari denied, 284 U. S. 667. Accordingly the taxpayer's evidence must be such as will affirmatively disclose a different valuation to be more nearly correct than that of the Commissioner. Petitioner's argument to the contrary (Br. 14–15) confuses the burden of proof resting on the taxpayer with the mere burden of going forward with the evidence.

It seems plain that the record contains nothing to show that the Commissioner's determination was either arbitrary, erroneous, or excessive. Compare *Helvering* v. *Taylor,* 293 U. S. 507. The sole evidence introduced by the taxpayer to overcome this determination consisted of the sales prices obtained in 1913 and in the years 1926–1928. We

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merely based on cost (1.1 cents, R. 6) plus improvements (10.26 cents, R. 6), the value, prior to discounting, would have been but 11.36 cents per square foot. If discounted, this figure would be reduced to roughly 2.6 cents per square foot. (See footnote 5, *supra,* p. 13.) Instead, a value of 23.96 cents per square foot was allowed (R. 6).

have shown that the 1913 prices are grossly inadequate as a guide to fair market value and that the 1926–1928 prices are not only equally inadequate but, because they could not be foreseen in 1913, irrelevant as well. It follows that the Commissioner's determination was substantially uncontradicted and that the taxpayer's evidence was wholly consonant with the Commissioner's determination. In such a situation the court below properly directed that the Commissioner's determination be affirmed.[11]

Nor does this case fall within that elastic category of cases in which considerations of fairness suggest that the appellate court might properly direct a rehearing before the Board, or empower the Board to entertain such an application. (1) The Board's erroneous theory of law became apparent only after the taxpayer had submitted his case for decision, and the record contains no other indication that the taxpayer was misled by the Board's

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[11] In other cases, the situation might arise that the taxpayer had introduced sufficient substantial evidence tending to overcome the Commissioner's determination so that the appellate court could not, in reversing for error of law, affirm the Commissioner's determination without weighing the evidence before the Board. In such a case the appropriate procedure would seem to be to remand to the Board with directions for that tribunal, proceeding upon a correct theory of law, to decide whether the Commissioner's determination should be affirmed or a rehearing directed. Compare *Landis* v. *North American Co.*, No. 221, October Term, 1936, decided December 7, 1936. The Government does not believe the taxpayer's evidence in this case to be of weight sufficient to call for this procedure.

erroneous theory. (2) The taxpayer before the Board understood that the Government viewed the time which must elapse before sale of the lots as an indispensable factor in the determination of fair market value, and yet chose to offer no evidence which would tend to disprove the Commissioner's determination if this element were considered. (3) The taxpayer objected, because the engineer who made the report was not available for cross-examination, to the introduction of the report which set forth in full the basis of the Commissioner's determination: had it wished to attack the Commissioner's determination the engineer was available upon subpoena by the taxpayer.

## CONCLUSION

It is therefore respectfully submitted that the decision of the court below should be affirmed.

STANLEY REED,
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DECEMBER 1936.

## APPENDIX

Revenue Act of 1926, c. 27, 44 Stat. 9, 16, 110:

SEC. 204. (b) The basis for determining the gain or loss from the sale or other disposition of property acquired before March 1, 1913, shall be (A) the cost of such property (or, in the case of such property as is described in paragraph (1), (4), or (5) of subdivision (a), the basis as therein provided), or (B) the fair market value of such property as of March 1, 1913, whichever is greater. In determining the fair market value of stock in a corporation as of March 1, 1913, due regard shall be given to the fair market value of the assets of the corporation as of that date.

* * * * *

SEC. 1003. (a) The Circuit Courts of Appeals * * * shall have exclusive jurisdiction to review the decisions of the Board * * *; and the judgment of any such court shall be final, except that it shall be subject to review by the Supreme Court of the United States upon certiorari, in the manner provided in section 240 of the Judicial Code, as amended.

(b) Upon such review, such courts shall have power to affirm or, if the decision of the Board is not in accordance with law, to modify or to reverse the decision of the Board, with or without remanding the case for a rehearing, as justice may require. (U. S. C., Title 26, Sec. 641.)

Revenue Act of 1928, c. 852, 45 Stat. 791, 818:

SEC. 113. BASIS FOR DETERMINING GAIN OR LOSS.

* * * * *

(b) *Property acquired before March 1, 1913.*—The basis for determining the gain or loss from the sale or other disposition of property acquired before March 1, 1913, shall be:

(1) the cost of such property (or, in the case of such property as is described in subsection (a) (1), (4), (5), or (12) of this section, the basis as therein provided), or (2) the fair market value of such property as of March 1, 1913, whichever is greater. In determining the fair market value of stock in a corporation as of March 1, 1913, due regard shall be given to the fair market value of the assets of the corporation as of that date.

Treasury Regulations 69:

ART. 1591. *Basis for determining gain or loss from sale.*—The basis for determining the gain or loss from the sale or other disposition of property acquired after February 28, 1913, is, in general, the cost of such property. * * * The basis for determining the gain or loss from the sale or other disposition of property acquired before March 1, 1913, is—

(1) The cost of such property * * *, or

(2) The fair market value of such property as of March 1, 1913, whichever is greater.

What the fair market value of property was on March 1, 1913, is a question of fact to be established by competent evidence. * * * In the case of property traded in on public exchanges, actual sales at or about the basic date afford evidence of value, but in each

case the nature and extent of the sales and the circumstances under which they were made must be considered. Thus, prices received at forced sales or prices received for small lots of property may be no real indication of the value of the property.

Treasury Regulations 74:

ART. 591. *Basis for determining gain or loss from sale.*—The basis for determining the gain or loss from the sale or other disposition of property acquired after February 28, 1913, is, in general, the cost of such property. * * * The basis for determining the gain or loss from the sale or other disposition of property acquired before March 1, 1913, is (1) the cost of such property * * *; or (2) the fair market value of such property as of March 1, 1913; whichever is greater.

What the fair market value of property was on March 1, 1913, is a question of fact to be established by competent evidence. * * * In the case of property traded in on public exchanges, actual sales at or about the basic date afford evidence of value, but in each case the nature and extent of the sales and the circumstances under which they were made must be considered. Thus, prices received at forced sales or prices received for small lots of property may be no real indication of the value of the property.

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